

FILED  
SCRANTON

NOV 03 2003

Per

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE, JOHN DOE, SR. and JANE  
DOE,

Plaintiff,

vs.

FATHER ERIC ENSEY, FATHER  
CARLOS URRUTIGOITY, DIOCESE OF  
SCRANTON, BISHOP JAMES C. TIMLIN,  
THE SOCIETY OF ST. JOHN, THE  
PRIESTLY FRATERNITY OF ST. PETER  
and ST. GREGORY'S ACADEMY,

Defendant.

Case No.: 3 CV 02-0444

AFFIDAVIT OF JAMES BENDELL

James Bendell, being first duly sworn, deposes and states as follows:

1. I am one of the attorneys representing the plaintiffs in this case.
2. On August 26, 2003, I faxed a letter to the defense attorneys confirming a deposition schedule for the week of October 20. A copy of this letter is attached hereto as Exhibit 'A.' Note that the deposition of Matthew Selinger was scheduled for Friday, October 24.
3. An additional round of depositions in this case is being planned for the week of November 10, 2003. These are depositions of witnesses in other cities and other states. It was my attention to attend these depositions in person in the respective cities. In response, I was advised that the defense would oppose depositions in other cities unless plaintiffs paid for travel costs. I received a defense request to hold these depositions by

telephone instead. Accordingly, on September 23, I faxed a letter to defense counsel agreeing to conduct telephone depositions in November. A copy of this letter is attached hereto as Exhibit 'B'.

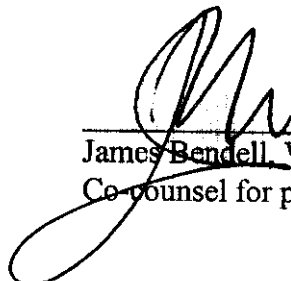
4. After I could not convince defense counsel to attend even the Matthew Selinger Pittsburgh deposition live, I agreed to conduct this deposition by phone as well. Attached hereto as Exhibit 'C' is a copy of the letter I faxed to defense counsel on October 13, 2003, confirming that Matthew Sellinger's deposition would be conducted in Scranton by phone.

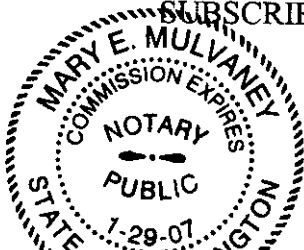
5. During the first day of depositions during the week of October 20, defense attorney Sal Cognetti requested that the deposition of Matthew Sellinger be postponed so that Mr. Cognetti could travel to Fordham University on Friday, October 24, 2003 to watch the swearing in of the new president of Fordham. I did not agree to this request because the deposition of Matthew Sellinger was difficult to schedule and because the witness was already placed under inconvenience and stress given the fact that he would be questioned about his sexual molestation at the hands of Fr. Urrutigoity. Mr. Cognetti requested that I think about the issue some more, and I agreed to do so.

6. On Tuesday, October 21, I informed Mr. Cognetti, along with the other defense attorneys, that witness Jeffrey Bond had told me that the deposition scheduled for Thursday would not work for his schedule. ~~Jeffrey Bond is a witness in this case, not a~~ party. Plaintiff's counsel represent Mr. Bond in other matters. I advised Mr. Cognetti that Jeffrey Bond would be faxing a letter to his office regarding the deposition and that I could not speak on his behalf. At that time Mr. Cognetti asked whether Matthew Selinger's deposition could be moved from Friday to Thursday. I told him that I would try to do this.

7. At some inconvenience to Mr. Coleman's staff, I was able to change the deposition of Selinger from Friday to Thursday as Mr. Cognetti requested. Defense counsel were informed of the new date and time for the Thursday deposition.
8. On Wednesday, October 22 I spoke by phone with Mr. Vincent Cimini, partner of attorney Cognetti. Mr. Cimini advised that his firm was objecting to the deposition of Mr. Sellinger because they did not want to conduct a perpetuation deposition by phone. As I told Mr. Cognetti previously, I would be happy to consider is just an ordinary discovery deposition. Mr. Cimini indicated they were still opposed and wished to schedule a discovery conference with the trial judge. I informed Mr. Cimini that I would keep my cell phone on both Wednesday afternoon and Thursday morning for a discovery conference. Meanwhile, Mr. Cimini faxed two letters to the office of plaintiff's counsel indicating an objection to the Sellinger deposition because it was a perpetuation deposition. This letter was faxed despite that fact that I told both Mr. Cimini and Mr. Cognetti that I would accommodate their concern by simply making this a discovery deposition.
9. Mr. Cimini never contacted me again for a discovery conference with the court.
10. On Thursday, October 23, I arrived for the Selinger deposition at approximately 9:40 AM. At that time I saw Mr. Cimini and Fr. Ensey walking away from the building where the deposition was to occur.
11. No other attorneys showed up at the 10:00 AM deposition, a deposition originally scheduled for Friday, but moved by me to Thursday at Mr. Cognetti's request.

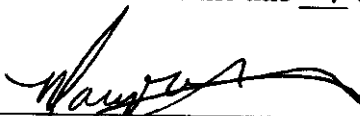


  
James Bendell, WSBA # 20820  
Co-counsel for plaintiffs



I certify that I have a true copy of  
this pleading to be mailed to Cognetti,  
O'Brien and Leeson on 10/27/03

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of October, 2003.

  
NOTARY PUBLIC residing at Port Townsend  
My commission expires 1.29.07



**JAMES M. BENDELL**

ATTORNEY AT LAW



2535 IVY STREET • POST OFFICE BOX 587 • PORT TOWNSEND, WA 98368 • (360) 379-5221

August 26, 2003

**By Facsimile only**

James O'Brien, Esq. 570-342-9492  
KENNEDY, O'BRIEN, McCORMACK & MULCAHEY  
Scranton Life Building, Suite 504  
538 Spruce Street  
Scranton, PA 18503-1808

Joseph Leeson, Esq. 610-691-8719  
LEESON, LEESON & LEESON  
P.O. Box 1426  
Bethlehem, PA 18016-1426

Sal Cognetti, Jr. 570-346-0776  
Vincent B. Cimini  
Foley, Cognetti, Comverford & Cimini  
700 Scranton Electric Building  
507 Linden Street  
Scranton, PA 18503-1666

RE: Doe v. Diocese of Scranton et al

Dear Counsel:

This letter is to confirm our deposition schedule for the week of October 20.

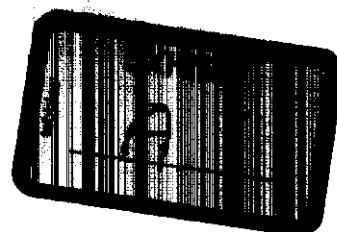
Monday – Bishop Timlin at 9:00 AM.

Tuesday – Bishop Dougherty at 9:00 AM  
Allen Hicks at 11:00 AM  
Dan and Sue Price at 1:00 PM  
Fr. Devillers at 3:00 PM.

Wednesday – no depositions.

Thursday – Jeff Bond at 9:00 AM and Fr. Munkelt to follow.

Friday – Matt Sellinger at 1:00 PM in Pittsburgh.

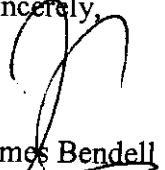


AUGUST 26, 2003 LETTER TO DEFENSE COUNSEL – PAGE 2

Jim O'Brien will let me know by this Thursday if Bishop Timlin has a conflict with a deposition for October 20, so we can move it to another day that week. If Bishop Timlin claims he is not free any of the scheduled deposition days that week I will file a motion requiring him to attend the deposition. Moreover, I would be happy to write a letter to Rome explaining the seriousness of the subject matter and further advising that Bishop Timlin's refusal to attend the deposition that week might be viewed as "insensitive."

I will fax you the schedule for the November out of state depositions in a few days.

Sincerely,



James Bendell

cc: Harry Coleman



**JAMES M. BENDELL**

ATTORNEY AT LAW



2535 IVY STREET • POST OFFICE BOX 587 • PORT TOWNSEND, WA 98368 • (360) 379-5221

September 23, 2003

**By Facsimile only**

James O'Brien, Esq. 570-342-9492  
KENNEDY, O'BRIEN, McCORMACK & MULCAHEY  
Scranton Life Building, Suite 504  
538 Spruce Street  
Scranton, PA 18503-1808

Joseph Leeson, Esq. 610-691-8719  
LEESON, LEESON & LEESON  
P.O. Box 1426  
Bethlehem, PA 18016-1426

Sal Cognito, Jr. 570-346-0776  
Vincent B. Cimini  
Foley, Cognito, Comverford & Cimini  
700 Scranton Electric Building  
507 Linden Street  
Scranton, PA 18503-1666

RE: Doe v. Diocese of Scranton et al

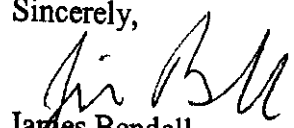
Dear Counsel:

I am in receipt of your letters demanding telephonic depositions for November. After some reflection I think that is a reasonable request.

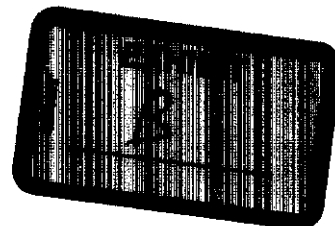
What I propose is that a court reporter and a videographer will be present at the deposition but all of us attorneys will ask questions from Scranton by phone.

My one request is that, since I am conceding the point on all the out of state depositions, won't you at least agree to go to Pittsburgh for the Selinger deposition? I don't think the court would make us pay for this given our other concessions.

Sincerely,

  
James Bendell

cc: Harry Coleman



**JAMES M. BENDELL**

ATTORNEY AT LAW

2535 IVY STREET • POST OFFICE BOX 587 • PORT TOWNSEND, WA 98368 • (360) 379-5221

**By facsimile only**

October 13, 2003

James O'Brien, Esq. 570-342-9492  
KENNEDY, O'BRIEN, McCORMACK & MULCAHEY  
Scranton Life Building, Suite 504  
538 Spruce Street  
Scranton, PA 18503-1808

Joseph Leeson, Esq. 610-691-8719  
LEESON, LEESON & LEESON  
P.O. Box 1426  
Bethlehem, PA 18016-1426

Sal Cognetti, Jr. 570-346-0776  
Vincent B. Cimini  
Foley, Cognetti, Conoverford & Cimini  
700 Scranton Electric Building  
507 Linden Street  
Scranton, PA 18503-1666

RE: Doe v. Diocese of Scranton et al

Dear Counsel:

For your convenience I have decided to conduct Selinger's deposition by phone. We will all question him by phone from Scranton. There will be a videographer and court reporter in Pittsburgh.

We will question Mr. Selinger about the sexual groping committed by Fr. Urrutigoity.

Sincerely,

  
James Bendell